(3)
(1)

SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

SECOND APPEAL NO. 389 /05.

APPELLANTS
PLAINTIFFS

:1) Ghasiyaram, S/o Rajman Gond, aged 67 years.

2) Budhram, S/o Rajan Gond, aged about 63 years.

3) a. Aasharam, S/o Sudhuram, aged about 34 years.

b. Atmaram, S/o Sudhuram, aged about 32 years.

c. Ashok, S/o Sudhuram, aged about 28 years.

d. Charmo Bai, Wd/o Late Sudhuram, aged about 52 years.

4) a. Smt. Kaushilya Bai, Wd/o Late Tularam.

b. Vishnuram, S/o Tularam.

5) Pilaram, S/o Rajan Gond, aged about 40 years.

6) Sukram, S/o Rainsingh Gond, aged about 45 years.

7) Shivlal, S/o Rainsingh Gond, aged about 37 years.

8) a. Chheduram, S/o Devisingh, aged about 45 years.

b. Ishwar, S/o Devisingh Gond, aged about 39 years.

All R/o Sarangpal, Tahsil & P.S.- Kanker, Distt-Kanker (C.G.)

P.R. No. 1432 dated 13.5.05
Presented by Shri ... Advocate

(2)
(4)

VERSUS

NON-APPLICANTS DEFFENDENTS :1) Bhagwati Bai, W/o Chandan Singh Gond, aged about 72 years, Occup.-Agriculture, R/o Sarangpali, Tah. & P.S.-Kanker, Distt.-Kanker (C.G.)

2) State of C.G. Govt., through : The Collector, Kanker (C.G.)

APPEAL UNDER SECTION 100 OF C. P. C.

declaration of title and possession of the half share of

(22)

HIGH COURT OF CHHATTISGARH : BILASPUR

Second Appeal No. 389 of 2005

Appellants/ Plaintiffs : **Ghasiyaram and others.**

Vs.

Respondents : 1. **Bhagwati Bai**

2. **State of Chhattisgarh**

Appellants by Shri Sunil Sahu, Advocate.
State/respondent No.2 by Shri J.D.Bajpai, Govt. Advocate with Shri Sanjeev Agrawal, Panel Lawyer.

ORDER
(Passed on 05/12/05)

Dhirendra Mishra, J

This is the plaintiffs' second appeal under Section 100 of the Code of Civil Procedure (for brevity 'the Code'). The plaintiffs have preferred this appeal as their suit for declaration of title and possession has been dismissed by the trial Court by order dated 06.03.1999 passed in Civil Suit No.66-A/92 and the appeal preferred by them has also been rejected by the learned First Additional District Judge, Kanker vide his order dated 02.03.2005 passed in Civil Appeal No. 55-A/2004. (Parties shall hereinafter be referred to as per their description before the trial Court.)

2. Case of the plaintiffs is that land described in schedule 'A' of the plaint admeasuring 11.67 acres situated at village-Sarangpal and land described in schedule 'B' admeasuring 23.84 acres situated at village-Patoud were earlier recorded in the name of ancestors of the parties namely Khandu and Mohan since the period of Kanker riyasat. After their death, the names of their heirs namely Bodru, Bansingh, Sukalu-all sons of Mohan and Raisingh-son of Khandu were recorded. However, the father of defendant No. 1 Raisingh illegally got his name mutated in the above land and after his death, defendant No. 1 got her name mutated in the above suit property. The plaintiffs are entitled for ½ share over the suit land and

accordingly, the above suit for declaration of ½ share and possession has been filed.

3. Defendant No. 1 in her written statement denied the averments of the plaint and pleaded that since the time of Kanker riyasat her father Raisingh-son of Khandu was the recorded owner of the suit property which is self acquired property of Raisingh. Raisingh vide his registered Will dated 16.05.1952 had bequeathed the land situated at village-Sarangpal to defendant No.1 and since then she is in possession. Whereas defendant No. 1 inherited the land situated at village-Patoud after the death of Raisingh in the year 1960. Their ancestors Mohan and Khandu were living separately since the time of Kanker riyasat and the plaintiffs have 40 to 50 acres of ancestral land in village-Sarangpal.

4. On the basis of the pleadings of the respective parties issues were framed by the learned trial Court and on the basis of documentary and oral evidence available on record, the learned trial Court dismissed the suit of the plaintiffs by recording a finding that the plaintiffs have failed to prove that the suit land was recorded jointly in the name of their ancestors Mohan and Khandu and after their death, it was recorded in the name of their heirs Bodru, Bansingh, Sukal and Raisingh. It has been also held that it is not proved that the suit land is the self acquired property of Khandu or Raisingh had illegally got his name recorded over the suit land. On the basis of the above findings, it has been held that the plaintiffs are not the owner of ½ share and therefore they are not entitled to obtain possession of ½ share of the suit land and that the suit is barred by limitation.

5. The plaintiffs preferred civil appeal against the judgment and decree passed by the learned trial Court. However, the same has also been dismissed by the impugned judgment and decree by the learned Additional District Judge with the finding that partition had taken place since the time of ancestors of the parties and as per Ex.D/2 father of defendant No. 1 is the recorded owner of the suit land situated at village-Sarangpal since 1941-42, as per document of Ex.D/4 Raisingh is the recorded owner of the above land since 1947-48 and as per document of Ex.D/5 the name of Bhagwati Bai finds place from 1952-53 in the land situated at village-Sarangpal and since then her name is continuously

recorded as Bhumiswami in the above land. On the basis of the oral evidence, the learned appellate Court held that the plaintiffs are cultivating over 40.85 acres of land since the time of Mohan-their grand-father and plaintiffs Budhram Ghasiya and Peelaram are cultivating the land which had fallen in the share of Bodhru.

6. Thus on the basis of documentary and oral evidence available on record, the learned appellate Court had held that partition has taken place in the family long back during their ancestors' period and the learned trial Court has rightly held that the plaintiffs have not been able to prove their title over the suit property.

7. Learned counsel for the plaintiffs submits that both the Courts below have disregarded the documents of Ex.P/1 and P/2 being the document of Kistbandhi Khatouni for village-Sarangpal where the names of Bodhru, Sukalu-sons of Mohan and Raisingh-son of Khandu are jointly recorded as owners of the property described in schedule 'A' of the plaint. Similarly, the document of Ex.P/3 has also not been considered in which the names of ancestors of the plaintiffs and defendant No. 1 are recorded as joint owners of the land described in schedule 'B' situated at village-Patoud. He further submits that the suit has been dismissed by the trial court on the ground that name of defendant No.1 is recorded since 1952-53 and the suit has been filed on 09.09.1992, therefore, the suit is barred by law of limitation. However, learned trial Court has ignored this fact that the cause of action arose on 29.05.1992 when defendant No. 1 executed a Will with a view to disentitle the plaintiffs from the suit property.

8. I have heard learned counsel for the appellants/plaintiffs.

9. The above objections raised by the plaintiffs has been duly considered by both the Courts below and the same have been rejected on the valid ground that the documents of Ex.P/1, P/2 and P/3 pertain to the period 1953-54 whereas even before 1953-54, the land was recorded in the name of father of defendant No.1-Raisingh in the year 1941-42 and 1947-48. The plaintiffs have admitted this fact that the name of defendant No. 1 was recorded over the suit land described in schedule 'A' from 1952-53 and she was alone in possession of the suit property to the exclusion

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others, which is based on the admission of the witnesses and the plaintiffs. Thus findings recorded by both the Courts below are based on proper appreciation of oral and documentary evidence available on record.

10. On the basis of aforesaid discussions, I am of the opinion that findings of both the Courts below are concurrent findings of facts and the learned counsel for the appellants/plaintiffs has not been able to point out any perversity or illegality in the impugned judgment and decree and no question of law much less any substantial question of law is involved for adjudication of this appeal. Accordingly, the appeal being devoid of merits deserves to be dismissed at the motion stage itself and it is dismissed.

Sd/-
Dhirendra Mishra
Judge